

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SPORTBOX LLC, and
WILLIAM V. FRABIZIO III

Plaintiffs,

v.

ELECTRIC-SPORTS, INC.,
JOHN E. CONWAY, and MARK BORTMAN

Defendants.

CIVIL ACTION No. 04-12588 DPW

ELECTRIC SPORTS, INC.,
JOHN E. CONWAY, and MARK BORTMAN

Plaintiffs in Counterclaim,

v.

SPORTBOX LLC, and
WILLIAM V. FRABIZIO III,

Defendants in Counterclaim.

**AFFIDAVIT OF MICHELE A. WHITHAM, ESQUIRE
FILED IN OPPOSITION TO
EMERGENCY MOTION TO EXCUSE FOLEY HOAG AS DEFENDANTS' COUNSEL**

I, Michele A. Whitham, hereby depose and state as follows:

1. I am a partner of the law firm of Foley Hoag LLP, 155 Seaport Boulevard, Boston, Massachusetts 02210 and have been retained as litigation counsel on behalf of the defendants/plaintiffs in counterclaim in this matter.

2. I have been admitted to practice in the United States Circuit Courts for the First and Fourth Circuits, the United States District Court for the District of Massachusetts, and the Courts of the Commonwealth of Massachusetts, and have also appeared *pro hac vice* in the

federal and/or state courts of New Hampshire, New York, Maryland, Virginia, Florida, Ohio, Michigan, Missouri and California. I am in good standing and eligible to practice in all courts to which I have been admitted and have never had any disciplinary matters involving me pending in any jurisdiction.

3. On or about October 16, 2002, I was retained by defendant Mark Bortman to serve as his personal attorney in severance negotiations with a former employer. I represented Mr. Bortman from October 16, 2002 through April 11, 2003, when the matter was concluded. I had no further contact with Mr. Bortman following the conclusion of that representation until the events referenced in Plaintiff's Emergency Motion to Excuse Foley Hoag As Defendants Counsel (the "Emergency Motion") and addressed in my affidavit below.

4. On July 8, 2004, I received a telephone call from Mr. Bortman. Mr. Bortman informed me that he was at that time working for a company named Sportbox LLC. Before this time, I had never heard of or had contact with Sportbox LLC. Mr. Bortman described Sportbox to me only as an exclusive licensee of Major League Baseball ("MLB") for the sale at MLB events of MLB-branded radios that permit attendees to hear play-by-play commentary while watching games. Mr. Bortman also said that Sportbox was considering engaging new counsel to provide certain specialized legal services to the company, in particular licensing, intellectual property litigation and private equity financing services. He concluded the conversation by asking me if Foley Hoag would agree to being interviewed for this role. I thanked Mr. Bortman for the opportunity and informed him that I would work to assemble a team of appropriate attorneys for he and his colleagues at Sportbox to meet and consider. We concluded the conversation by agreeing to find a time to meet once I had provided information regarding such a team. Attached at Exhibit A is a true and correct copy of an email from me to Mr. Bortman at

Sportbox referencing the July 8th conversation and confirming the next steps I was to take to move the discussion forward. Also attached at Exhibit B is a printout of the description of Sportbox's business publicly posted on its website (*www.sportbox.com*) through and including March 2005. My July 8th conversation with Mr. Bortman was brief, lasting no more than a few minutes.

6. Also on July 8th, I promptly undertook a conflicts check to determine whether Foley Hoag was able to represent Sportbox LLC. Clearing conflicts, I reviewed the backgrounds and experience of lawyers of Foley Hoag with experience relevant to the legal services Mr. Bortman had inquired about, and identified a team to propose to the company.

7. On the morning of July 9, 2004, I received a brief email from Mr. Bortman thanking me for speaking with him the day before and stating, "We look forward to meeting with you and your team." A true and correct copy of this email is attached at Exhibit C. I responded to this communication from Mr. Bortman by informing him that I had composed a team and proposing dates for the requested meeting. A true and correct copy of my responsive email is attached at Exhibit D.

8. Late on the morning also of July 9, 2004, having secured current copies of the resumes of the members of the proposed team, I emailed those materials to Mr. Bortman for distribution to his colleagues with a brief cover note. A true and correct copy of this email with all attachments is attached as Exhibit E. Mr. Bortman responded approximately two hours later asking if we could speak to "lock a time down for next week." A true and correct copy of this email with all attachments is attached as Exhibit F. I answered by email, informing him that my schedule required us to look at the week following the one he had proposed. A true and correct copy of this email with all attachments is attached as Exhibit G.

9. I did not hear from Mr. Bortman again until three days later, on July 12, 2004, when Mr. Bortman and I resumed our efforts to schedule a meeting via email. After a series of exchanges, we left it that the meeting would be put off until sometime in August given the press of business for all concerned. Attached at Exhibit H are true and correct copies of all of the emails that constitute this exchange.

10. The emails attached at Exhibits A and C through H, together with my initial, brief telephone conversation with Mr. Bortman, constitute the entirety of my communications -- and the communications of this firm -- with Mr. Bortman, on behalf of Sportbox LLC and Mr. Bortman's "colleagues" at the company, which Mr. Frabizio well knows as all of the emails referenced above reside on Sportbox's email server. At no time during my July 8th conversation with Mr. Bortman or thereafter did Mr. Bortman communicate to me any confidential, proprietary or trade secret information belonging to Sportbox or Mr. Frabizio, nor did I ever request any such information. At no time during the conversation or thereafter did Mr. Bortman provide, as Mr. Frabizio has alleged in the Emergency Motion, "business information even Business Plans and Financial information . . . electronically and verbally" or "intricate knowledge of Plaintiffs' business, infrastructure and personal information about Plaintiffs' [sic]," nor did I ever ask for any such information. At no time did Foley Hoag ever accept any assignment from, conduct any work for, bill any time to or collect any fees for services rendered from Sportbox or Frabizio.

11. More particularly, at no time relevant to the allegations set forth in the Emergency Motion -- including in any of my communications with Mr. Bortman -- did I even hear or see the name "Image Innovations," let alone accept an engagement on behalf of Sportbox or Mr. Frabizio "concerning a potential partnership between Sportbox and Image Innovations," as Mr.

Frabizio now claims in the Emergency Motion. Nor did I have any knowledge of any taping of a telephone conversation that allegedly took place with Image Innovations. To be absolutely clear, neither I nor any member of this firm has ever been a party, as Mr. Frabizio alleges without benefit of any factual support whatsoever, “to certain illegal activities, specifically wiretapping”

12. Following the July 12th exchange, I had no further communications with Mr. Bortman until August 13, 2004, when he asked via email to schedule time to speak with me the following week. Also via email, we set a time to speak on August 16, 2004, at which time I learned that Mr. Bortman was resigning his employment from Sportbox and that no meeting would be scheduled to interview Foley Hoag to represent that company.

13. On or about August 17, 2004, following Mr. Bortman’s resignation from Sportbox, Mr. Bortman retained Foley Hoag to represent him in negotiating his separation from Sportbox. Also, on or about August 25, 2004, Electric Sports, a new company being formed by Mr. Bortman and Mr. Conway, retained Foley Hoag to represent that company. At no time prior to its acceptance of the Electric Sports representation had anyone from Foley Hoag ever met or communicated with Frabizio or Sportbox.

14. Mr. Frabizio also submits in support of the Emergency Motion an e-mail header that he alleges identifies an email dated September 13, 2004, in which “Foley clearly agreed . . . that the defendants’ legal actions and claims were to put the Plaintiffs’ out of business” The email that was delivered to Sportbox was a privileged communication directed by me to Mr. Conway and Mr. Bortman, in their capacities as agents of Electric Sports and pursuant to a joint defense agreement. Due, however, to an electronic communication “glitch” apparently caused by the operation of Foley Hoag’s email system, rather than delivering the email directed to Mr.

Bortman to his personal email address as intended, the email system apparently picked up from its archives Mr. Bortman's former email address at Sportbox and misdelivered the email to that address.

15. In oral and written communications with counsel for Sportbox dating from early September, 2004, I had informed Sportbox that it was continuing to maintain unchanged Mr. Bortman's email -- and voicemail -- accounts at Sportbox, thereby erroneously communicating to the world at large that Mr. Bortman was still an employee of Sportbox. In those communications, I had requested that Sportbox immediately desist from this practice.

16. By email dated September 15, 2005, counsel for Sportbox informed me about the misdelivered email, acknowledging in his email that the delivery to Sportbox was "erroneous[]." A true and correct copy of this email is attached at Exhibit I.

17. Thereafter, in response to a request from me, counsel for Sportbox agreed, in a long letter dated October 5, 2004 addressing largely unrelated subjects, to delete all copies of the email from Sportbox's and counsel's systems, stating in relevant part, "... out of continuing

professional courtesy we have deleted all instances of the email in question on our system and I have a confirmation from my client that they have done the same.”

SWORN TO AND SIGNED UNDER THE PAIN AND PENALTIES OF PERJURY

THIS 18th DAY OF MARCH, 2005.

 Esquire
Michele A. Whitham, Esquire

EXHIBIT A

Whitham, Michele

From: Whitham, Michele
Sent: Thursday, July 08, 2004 6:25 PM
To: 'markb@sportbox.com'
Subject: Thanks for the call

So nice to hear from you, Mark. I'm assembling a team to meet with you; trying for as early as next week. In the meantime, I look forward to learning more about sportbox!

Michele A. Whitham, Esquire
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1239 (direct)
(617) 832-7000 (fax)
mwhitham@foleyhoag.com

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EXHIBIT B

WORKING WITH ALL SPORTS TO BRING MORE INFORMATION AND ENJOYMENT TO THE FANS

sportbox

THE ULTIMATE FAN RADIO

OFFICIAL & EXCLUSIVE LICENSE OF MAJOR LEAGUE BASEBALL

AMERICAN LEAGUE NATIONAL LEAGUE

SPORTBOX HOME

LET SPORT BOX ENHANCE YOUR FAN EXPERIENCE

SPORTBOX HOME

ABOUT SPORTBOX
find out more about us

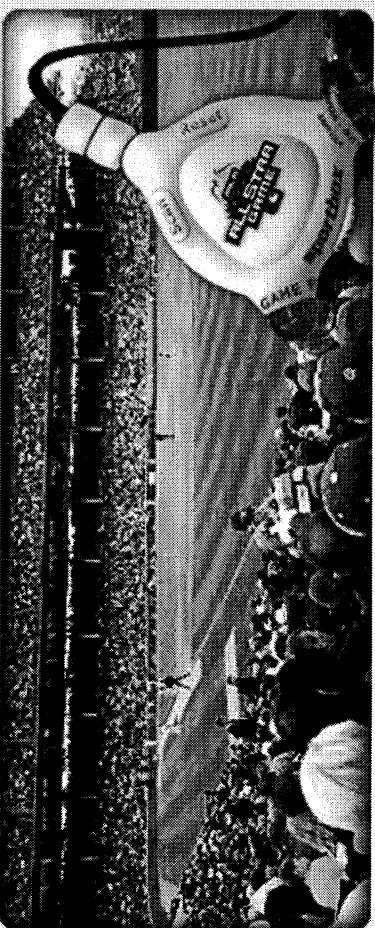
TECHNOLOGY
how does it work

NEWS & PRESS RELEASES
what's happening at Sportbox

SPONSOR ELEMENTS
branding and advertising
on a Sportbox


REQUEST INFORMATION
let us contact you

CHECK OUT sportbox PARTNERS




Sportbox enhances the audience's experience at the venues by selling the AM / FM radios, the smallest currently in production, to the fans allowing them the luxury of hearing the play-by-play and commentary, as if they were watching it on television, but with the excitement of actually being at the event.

Sportbox, LLC is securing a major portion of the end-user, wireless broadcast market in sports and entertainment venues. The initial offering places a small, branded broadcast radio receiver into the hands of thousands of fans for use before, during and after the event. During one venue alone, MLB's Allstar Game, tens of thousands of units were sold.



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3/16/2005 11:25 am

WORKING WITH ALL SPORTS TO BRING MORE INFORMATION AND ENJOYMENT TO THE FANS

sportbox

THE ULTIMATE FAN RADIO

OFFICIAL & EXCLUSIVE LICENSE OF MAJOR LEAGUE BASEBALL

AMERICAN LEAGUE NATIONAL LEAGUE

ABOUT SPORTBOX

SIMPLICITY EQUALS SUCCESS

- Sportbox enhances the experience at venues with our simply perfect radios; Sportbox allows people the luxury of hearing play-by-play and commentary as if they were watching the game on television.
- Sportbox has secured the major portion of the end-user, wireless broadcast market in sports and entertainment venues.
- Sportbox reaches the hundreds-of-millions fans for use before, during, and after the event. Our product reaches over one-quarter (1/4) of the world's total attendance to all sporting events. As an Exclusive Licensee of MLB, Sportbox has full access to more than 107 million fans in attendance at the games. At only one venue, MLB's All-star Game, thousands of Sportbox units sold-out and we have yet to receive a complaint.
- Your favorite team along with: a great radio, as a piece of memorabilia, and a great chance to win fantastic prizes. All of the about from the Exclusive Licensee of Major League Baseball, so you know that it is authentic and it is only \$9.99.

Sportbox affiliates have permission to print and display Major League Baseball signs and posters. (restrictions apply)

CHECK OUT sportbox PARTNERS

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find out more about us

TECHNOLOGY
how does it work

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WORKING WITH ALL SPORTS TO BRING MORE INFORMATION AND ENJOYMENT TO THE FANS



sportbox
THE ULTIMATE FAN RADIO



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WORKING WITH ALL SPORTS TO BRING MORE INFORMATION AND ENJOYMENT TO THE FANS



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RADIO

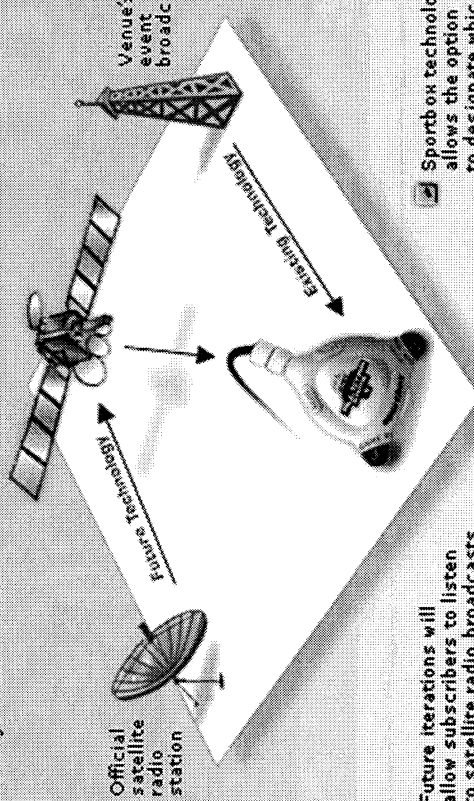
HOW IT WORKS

Official satellite radio station

Future Technology

Existing Technology

Venue's event broadcast



Sportbox produces tiny radio receivers that leverage existing commercial, AM-FM radio broadcasts to deliver play-by-play commentary to fans at events or anywhere within the range of the station

☒

Future iterations will allow subscribers to listen to satellite radio broadcasts anywhere in the world

☒

Sportbox technology allows the option to designate which radio station fans are tuned into while at and after an event

☒

3/16/2005 11:29 am

WORKING WITH ALL SPORTS TO BRING MORE INFORMATION AND ENJOYMENT TO THE FANS



THE ULTIMATE FAN RADIO



OFFICIAL & EXCLUSIVE LICENSE OF MAJOR LEAGUE BASEBALL

AMERICAN LEAGUE

NATIONAL LEAGUE

0 SPONSOR ELEMENTS

RADIO

EXTERIOR PACKAGING

INTERIOR PACKAGING



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how does it work



NEWS & PRESS RELEASES
whats happening at Sportbox



SPONSOR ELEMENTS
branding and advertising
on a Sportbox



REQUEST INFORMATION
let us contact you

CHECK OUT



PARTNERS

3/16/2005 11:29 am

☒ Sportbox leverages our Exclusive MLB License to brand radios in preexisting and well established radio markets. Sportbox uses radio technology to deliver the play-by-play and commentary to fans at, around, or near the event's broadcast. The Sportbox radio is also a fantastic FM auto-scan that functions anywhere, at any time.

☒ Both unit and package provide ample space for graphics and copy.

☒ Customize the promotions on all Sportbox radios




☒ NY Yankees Radio



☒ NY Mets Radio

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EXHIBIT C

Whitham, Michele

From: Mark R. Bortman [markb@sportbox.com]
Sent: Friday, July 09, 2004 8:57 AM
To: Whitham, Michele
Subject: RE: Thanks for the call

Michele,

Thank you for the call yesterday. We look forward to meeting with you and your team.

Thank You,

Mark R. Bortman
Sales & Marketing
Sportbox, LLC.
Brighton Landing East
20 Guest Street, Suite 400
Brighton, MA 02135
Direct: 617-779-2433
Cellular: 617-699-3548
Facsimile: 617-783-1008

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Sportbox, LLC.

Tel: 617-779-2424

From: Whitham, Michele [mailto:MWhitham@Foleyhoag.com]
Sent: Thursday, July 08, 2004 6:25 PM
To: markb@sportbox.com
Subject: Thanks for the call

So nice to hear from you, Mark. I'm assembling a team to meet with you; trying for as early as next week. In the meantime, I look forward to learning more about sportbox!

Michele A. Whitham, Esquire
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1239 (direct)
(617) 832-7000 (fax)
mwhitham@foleyhoag.com

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EXHIBIT D

Whitham, Michele

From: Whitham, Michele
Sent: Friday, July 09, 2004 9:06 AM
To: 'markb@sportbox.com'
Subject: RE: Thanks for the call

Hi, Mark. I've composed a team and have been polling them for availability. What do the afternoons of the 19th and 21st look like for you all? Is that soon enough for you (next week is looking jammed already)?

Michele A. Whitham, Esquire
FOLEY HOAG LLP
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Boston, MA 02210
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(617) 832-7000 (fax)
mwhitham@foleyhoag.com

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-----Original Message-----

From: Mark R. Bortman [mailto:markb@sportbox.com]
Sent: Friday, July 09, 2004 8:57 AM
To: Whitham, Michele
Subject: RE: Thanks for the call

Michele,

Thank you for the call yesterday. We look forward to meeting with you and your team.

Thank You,

Mark R. Bortman
Sales & Marketing
Sportbox, LLC.
Brighton Landing East
20 Guest Street, Suite 400
Brighton, MA 02135
Direct: 617-779-2433
Cellular: 617-699-3548

Facsimile: 617-783-1008

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Sportbox, LLC.

Tel: 617-779-2424

From: Whitham, Michele [mailto:MWhitham@Foleyhoag.com]
Sent: Thursday, July 08, 2004 6:25 PM
To: markb@sportbox.com
Subject: Thanks for the call

So nice to hear from you, Mark. I'm assembling a team to meet with you; trying for as early as next week. In the meantime, I look forward to learning more about sportbox!

Michele A. Whitham, Esquire
FOLEY HOAG LLP
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mwhitham@foleyhoag.com

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EXHIBIT E

Whitham, Michele

From: Whitham, Michele
Sent: Friday, July 09, 2004 11:51 AM
To: 'markb@sportbox.com'
Subject: Foley Hoag Team

Attached find resumes for the team I am organizing to meet with you and your colleagues at Sportbox.

Regards,

Michele A. Whitham, Esquire
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, Massachusetts 02210
(617) 832-1239 telephone
(617) 832-7000 facsimile
mwhitham@foleyhoag.com

<<Michele Whitham Resume.pdf>> <<Jeffrey Quillen Resume.pdf>> <<David Broadwin Resume.pdf>> <<Michael Boudett Resume.pdf>> <<Eric Damon Resume.pdf>>

Attachments:

Michele Whitham Resume.pdf (116667 Bytes)
Jeffrey Quillen Resume.pdf (98493 Bytes)
David Broadwin Resume.pdf (104482 Bytes)
Michael Boudett Resume.pdf (111202 Bytes)
Eric Damon Resume.pdf (103951 Bytes)



MICHELE A. WHITHAM

FOLEY HOAG LLP

CO-MANAGING PARTNER

PARTNER --LABOR AND EMPLOYMENT LAW AND LITIGATION DEPARTMENTS

155 SEAPORT BOULEVARD

BOSTON, MA 02210-2600

PHONE: 617.832.1239

FAX: 617.832.7000

E-MAIL: MWHITHAM@FOLEYHOAG.COM

AREAS OF CONCENTRATION

- Employment Law and Litigation
 - Representing employers in administrative, court and ADR proceedings
 - Conducting internal employment audits and investigations
 - Negotiating employment and severance agreements
 - Advising on employment policies, practices and procedures
 - Guiding layoffs and restructurings

EXPERIENCE

- Co-Managing Partner of Foley Hoag LLP
- Represents employers in every aspect of the employment relationship, including acting as lead trial counsel in administrative and court proceedings, acting as lead negotiator in direct and facilitated dispute resolution sessions; auditing employment policies, practices and procedures; negotiating employment offers, intellectual property agreements, employment contracts and severance agreements; advising on reductions in force and restructurings; and conducting internal investigations of alleged employee misconduct
- Particular expertise in defending EEO claims, enforcing non-competition and non-solicitation agreements, litigating executive claims to equity and other forms of compensation, and protecting employers from employee abuse of computer systems and electronic theft of intellectual property
- Practices in Massachusetts, New England and nationally (having recently litigated cases and advised on matters in, for example, Massachusetts, California, Colorado, Florida, Georgia, Ohio, Illinois, Maryland, Michigan, Missouri, New Jersey, New Hampshire, North Carolina, Texas, and Virginia); also advises internationally (having recently been involved in Canada, China, France, Germany, Sweden, the Netherlands, and the United Kingdom)
- Represents major employers, including, for example, Intel-Massachusetts, CGI-USA, and Polaroid Corporation
- Has over fifteen years of ADR experience (including serving as mediator in a variety of multi-party disputes and specializing in designing corporate dispute resolution mechanisms)

EDUCATION

Cornell Law School, J.D., Order of the Coif, 1988
Cornell University, M.S., Human Development, 1987; M.A.T., Education, 1971
Cornell University, B.A., Phi Beta Kappa, College Scholar, *cum laude*, 1970

BAR AND COURT ADMISSIONS

Massachusetts
U.S. District Court for the District of Massachusetts
U.S. Court of Appeals, First Circuit
U.S. Court of Appeals, Fourth Circuit
Various pro hac vice admissions

PROFESSIONAL INVOLVEMENT

- Unified Court System of the State of New York, served for many years as Senior Trainer for the Community Dispute Resolution Program
- Boston Bar Association, Member
- Massachusetts Bar Association, Member
- American Bar Association, Member

COMMUNITY INVOLVEMENT

- Shelter, Inc., President, Director since 1999
 - An organization that provides housing for homeless families

HONORS

- Subject of COMMON FIRE: LIVES OF COMMITMENT IN A COMPLEX WORLD (Beacon Press, 1996), which explores how individuals sustain a commitment to the common good
- Subject in 1999 of a film made by the United States Department of Justice that profiled, among others, a case in which she assisted the Commonwealth's United States Attorney achieve the first conviction since the Civil War of a violator of the anti-slavery amendment to the United States Constitution and won for the victim in a companion civil suit hundreds of thousands of dollars in overtime compensation

RELATED PROFESSIONAL EXPERIENCE

- Served from 1976 to 1988 as a faculty member of Cornell University prior to joining Foley Hoag, specializing in organizational development and dispute resolution

RECENT SPEECHES AND CONFERENCES

- Faculty, "Strategic Lateral Hiring," The Law Firm Lateral Partner Recruitment and Retention Summit, New York, New York, May 5-6, 2003
- Frequent speaker at employment law seminars and human resources professional associations
- Regularly conducts trainings for clients on employment law subjects

RECENT PUBLICATIONS

- *Don't Let Your Data Go Astray*, THE BOSTON GLOBE (November 14, 2000)
- *Defining the Job: Understanding Job Descriptions*, MASSACHUSETTS CONTINUING LEGAL EDUCATION, INC., (1998)

LANGUAGE SKILLS

- Reads and translates German



JEFFREY L. QUILLEN

FOLEY HOAG LLP

**PARTNER
BUSINESS DEPARTMENT
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2600
PHONE: 617.832.1205
FAX: 617.832.7000
E-MAIL: JQUILLEN@FOLEYHOAG.COM**

PRACTICE AREAS

- Venture Capital and Emerging Companies
- Mergers and Acquisitions
- Corporate Finance and Securities
- Life Sciences
- Technology Transfer and Licensing
- International

EXPERIENCE

- Serves as outside general counsel to a number of emerging biotechnology, software and information technology companies
- Represents venture capital funds and emerging companies in venture capital financing transactions, including private placements of convertible preferred stock and subordinated debt
- Represents buyers and sellers in mergers and acquisitions, involving public and private companies
- Assists clients in negotiating and drafting agreements regarding intellectual property rights, including patent license agreements with major research universities and collaboration agreements with pharmaceutical companies
- Assists foreign companies to acquire U.S. companies and organize international operations
- Represents borrowers and lenders in a variety of commercial lending and leasing arrangements including lines of credit, secured credit arrangements and project financings

EDUCATION

Colgate University, B.A., 1988
Duke University School of Law,
J.D., 1991

BAR AND COURT ADMISSIONS

Massachusetts
District of Columbia
Florida

PROFESSIONAL INVOLVEMENT

- Boston Bar Association, Member

RECENT PUBLICATIONS

- *Costs and Benefits of Scientific Advisory Boards*, FORUM REPORTER - THE NEWSLETTER OF THE MIT ENTERPRISE FORUM OF CAMBRIDGE (February 2004)
- *Creative Use of Milestones Can Unlock Venture Capital*, FORUM REPORTER - THE NEWSLETTER OF THE MIT ENTERPRISE FORUM OF CAMBRIDGE (February 2003)



DAVID A. BROADWIN

FOLEY HOAG LLP

PARTNER
BUSINESS DEPARTMENT
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BOSTON, MA 02210-2600
PHONE: 617.832.1259
FAX: 617.832.7000
E-MAIL: BROADWIN@FOLEYHOAG.COM

PRACTICE AREAS

- Mergers and Acquisitions
- Corporate Finance and Securities
- Venture Capital and Emerging Companies

EXPERIENCE

- Representation of buyers and sellers of public and private companies as well as lenders providing financings for acquisitions
- Public offerings; private placements; PIPEs transactions; bank financings
- Venture capital financings; start-up company issues

EDUCATION

New York University, B.A.
University of Chicago, M.A.
Yale Law School, J.D.

BAR AND COURT ADMISSIONS

Massachusetts

PROFESSIONAL INVOLVEMENT

- Boston Bar Association, Member

HONORS

- Yale Law Journal, Editor

RECENT PUBLICATIONS

- *An Introduction To Antidilution Provisions (Part 1)*, THE PRACTICAL LAWYER (June 2004)
- DOCUMENTING AND NEGOTIATING BUSINESS ACQUISITIONS
- Editor, BUYING AND SELLING CLOSELY-HELD BUSINESSES - MCLE (1997)
- *Insider Security Sales (Part 1)*
- *Insider Security Sales (Part 2)*
- *How to Draft Letters of Intent for Business Acquisitions*
- *Ensuring Due Authorization in Corporate Transactions*
- *Going Public Revisited*
- *Accounting and Tax Considerations in Business Acquisitions*
- *Protection of Minority Stockholders*



MICHAEL P. BOUDETT

FOLEY HOAG LLP

PARTNER
LITIGATION DEPARTMENT
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2600
PHONE: 617.832.1180
FAX: 617.832.7000
E-MAIL: MBOUDETT@FOLEYHOAG.COM

PRACTICE AREAS

- Intellectual Property
- Intellectual Property Litigation
- Patent Litigation
- Trademark
- Education

AREAS OF CONCENTRATION

- Trademark Litigation
- Trade Secret Litigation
- Non-Competition Disputes
- Employment Litigation
- General Commercial Litigation and Business Torts

EXPERIENCE

- Partner and Co-Deputy Coordinator of Foley Hoag's Litigation Department
- Has represented businesses as diverse as General Electric, CCBN.com, Lucent Technologies, Intertek Testing Services, U.S. Foodservice, Polaroid, and International Data Group
- Experienced in trademark, copyright, and patent infringement and Lanham Act disputes, with an emphasis on infringement suits in federal district court
 - Served as lead counsel in trademark and domain name case being litigated in federal district court in Denver and in bankruptcy court in Phoenix
 - Served as lead counsel in international trademark enforcement action brought in federal district court in Chicago
 - Serving as lead counsel in multi-party patent litigation involving machine vision technology pending
 - Regularly seeks and opposes motion for preliminary relief in intellectual property-related suits

- Extensive experience in litigating and trying cases involving non-competition agreements, non-solicitation agreements, and misappropriation of trade secrets
 - Served as co-lead counsel in Intertek Testing Services NA, Inc., et al. v. Curtis Straus LLC, et al., C.A. 98-903 (Middlesex Superior Court, Massachusetts), in which he obtained a multi-million dollar jury verdict for the plaintiff corporation against a group of ex-employees
 - Recently obtained a preliminary injunction on behalf of a high-tech client which brought to a halt another corporation's "raiding" campaign
 - Has counseled numerous clients regarding how to enforce agreements against departing employees as well as hiring employees who have agreements with other companies
- General commercial litigation in state and federal courts
- Served as Special Assistant District Attorney, Norfolk County (District Court Criminal Session), May-September 1997
- Clerked for the Honorable Mark L. Wolf in federal district court in Massachusetts

EDUCATION

Yale College, B.A., Phi Beta
Kappa, *summa cum laude*, 1988
Harvard Law School, J.D., *cum laude*, 1991

BAR AND COURT ADMISSIONS

Supreme Judicial Court of Massachusetts
U.S. District Court for the District of
Massachusetts
U.S. District Court for the Eastern District
of Michigan

PROFESSIONAL INVOLVEMENT

- Foley Hoag's Litigation Department, Deputy Chair
- Formerly served as a member of the Litigation Section Steering Committee of the Boston Bar Association
- American Intellectual Property Law Association, Member
- Boston Bar Association, Member

COMMUNITY INVOLVEMENT

- Formerly served as Co-Chair of the Pro Bono Committee of the Boston Bar Association's Litigation Section
- Represents political asylum seekers in U.S. Immigration Court

HONORS

- Selected for 1995 Distinguished Citizen Award from the Arc Massachusetts in recognition of pro bono advocacy on behalf of persons with mental disabilities

RECENT PUBLICATIONS

- *Trademark Infringement and Related Claims*, MASSACHUSETTS BUSINESS TORTS - MCLE (2002)
- *Domain Name Disputes: Cases Illustrate Limitations of ICANN Policy*, BOSTON BAR JOURNAL (March/April 2001)
- *The Goodwill Interest in Non-Competition Cases*, BOSTON BAR JOURNAL (September/October 1999)



ERIC P. DAMON

FOLEY HOAG LLP

ASSOCIATE
BUSINESS DEPARTMENT
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2600
PHONE: 617.832.1214
FAX: 617.832.7000
E-MAIL: EDAMON@FOLEYHOAG.COM

PRACTICE AREAS

- Corporate Finance and Securities
- Intellectual Property
- Technology Transfer and Licensing
- Mergers and Acquisitions
- Patent
- Trademark
- Venture Capital and Emerging Companies

EXPERIENCE

- Principal concentration in corporate and intellectual property matters for technology clients
- Represents technology companies in all aspects of their businesses, including formation and structure, private equity and debt financings, intellectual property licensing, sales and distribution agreements and other contractual arrangements, and other corporate matters
- Provides intellectual property counseling on a variety of matters, including patent and trademark counseling, technology transfer arrangements, licensing matters, and technical expertise in patent infringement disputes

EDUCATION

Tufts University, B.S. in Electrical
Engineering, *magna cum laude*,
1987

University of Southern California,
The Law School, J.D., 1994

BAR AND COURT ADMISSIONS

Federal and State Courts of California
U.S. Court of Appeals, Federal Circuit
U.S. Patent and Trademark Office (Agency)

PROFESSIONAL INVOLVEMENT

- American Intellectual Property Law Association, Member
- American Bar Association, Member
- Intellectual Property Law Section of California State Bar, Member
- Boston Bar Association, Member

RECENT SPEECHES AND CONFERENCES

- *Presenter*, Massachusetts Continuing Legal Education, Drafting Commercial Documents in Massachusetts Seminar Series, Sales and Distributorship Agreements, May 2001
- *Co-Author and Co-Presenter*, “Intellectual Property Rights in U.S. Government-Funded Contracts”, presented in connection with the Seminar Series on Intellectual Property and the Governmental Role sponsored by The New England Economic History Museum and the Federal Reserve Bank of Boston, January 2000

EXHIBIT F

Whitham, Michele

From: Mark R. Bortman [markb@sportbox.com]
Sent: Friday, July 09, 2004 2:17 PM
To: Whitham, Michele
Subject: RE: Foley Hoag Team

Michele,

Can we speak Monday morning to lock a time down for next week?

Mark R. Bortman

Sales & Marketing

Sportbox, LLC.

Brighton Landing East

20 Guest Street, Suite 400

Brighton, MA 02135

Direct: 617-779-2433

Cellular: 617-699-3548

Facsimile: 617-783-1008

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Sportbox, LLC.

Tel: 617-779-2424

From: Whitham, Michele [mailto:MWhitham@Foleyhoag.com]
Sent: Friday, July 09, 2004 11:51 AM
To: markb@sportbox.com
Subject: Foley Hoag Team

Attached find resumes for the team I am organizing to meet with you and your colleagues at Sportbox.

Regards,

Michele A. Whitham, Esquire
FOLEY HOAG LLP

155 Seaport Boulevard
Boston, Massachusetts 02210
(617) 832-1239 telephone
(617) 832-7000 facsimile
mwhitham@foleyhoag.com

<<Michele Whitham Resume.pdf>> <<Jeffrey Quillen Resume.pdf>> <<David Broadwin
Resume.pdf>> <<Michael Boudett Resume.pdf>> <<Eric Damon Resume.pdf>>

EXHIBIT G

Whitham, Michele

From: Whitham, Michele
Sent: Friday, July 09, 2004 2:56 PM
To: 'markb@sportbox.com'
Subject: RE: Foley Hoag Team

Mark, the two dates I suggested are for the week after next. The coming week is very difficult, as I am out for two days (Thursday & Friday). Did the dates I propose not work for you all?

Michele A. Whitham, Esquire
FOLEY HOAG LLP
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Boston, MA 02210
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mwhitham@foleyhoag.com

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Regards,

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<<Michele Whitham Resume.pdf>> <<Jeffrey Quillen Resume.pdf>> <<David Broadwin Resume.pdf>> <<Michael Boudett Resume.pdf>> <<Eric Damon Resume.pdf>>

EXHIBIT H

Whitham, Michele

From: Mark R. Bortman [markb@sportbox.com]
Sent: Monday, July 12, 2004 9:51 AM
To: Whitham, Michele
Subject: RE: Thanks for the call

Michele,

That is week of the DNC and to get to you will be very difficult. Do you have any other dates you are available?

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From: Whitham, Michele [mailto:MWhitham@Foleyhoag.com]
Sent: Friday, July 09, 2004 9:06 AM
To: markb@sportbox.com
Subject: RE: Thanks for the call

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-----Original Message-----
From: Mark R. Bortman [mailto:markb@sportbox.com]
Sent: Friday, July 09, 2004 8:57 AM
To: Whitham, Michele
Subject: RE: Thanks for the call

Michele,

Thank you for the call yesterday. We look forward to meeting with you and your team.

Thank You,

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Tel: 617-779-2424

From: Whitham, Michele [mailto:MWhitham@Foleyhoag.com]
Sent: Thursday, July 08, 2004 6:25 PM
To: markb@sportbox.com
Subject: Thanks for the call

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Whitham, Michele

From: Whitham, Michele
Sent: Monday, July 12, 2004 12:18 PM
To: 'markb@sportbox.com'
Subject: RE: Thanks for the call

No, the DNC is the following week (activities begin the 26th). I'm hoping to schedule our meeting before that, which is why I picked those dates. Let me know ASAP because everyone's schedule fills in fast.

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Sent: Friday, July 09, 2004 8:57 AM
To: Whitham, Michele
Subject: RE: Thanks for the call

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Sent: Thursday, July 08, 2004 6:25 PM
To: markb@sportbox.com
Subject: Thanks for the call

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Whitham, Michele

From: Mark R. Bortman [markb@sportbox.com]
Sent: Monday, July 12, 2004 12:37 PM
To: Whitham, Michele
Subject: RE: Thanks for the call

Michele,

Can we do it in August? We are in a crunch period before the DNC.

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Whitham, Michele

From: Whitham, Michele
Sent: Monday, July 12, 2004 12:40 PM
To: 'markb@sportbox.com'
Subject: RE: Thanks for the call

Mark, we are at your disposal. I was just trying to pull the whole team together as quickly as possible to be responsive to your legal needs. If you can wait, we certainly will accommodate your schedules. The only uncertainty is that I don't know my team's full vacation schedules. So why don't you send me a few of your preferred dates and I'll work them with my people's schedules to come up with something that works for everyone. Just don't go giving the work away before you speak with us!

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To: markb@sportbox.com
Subject: RE: Thanks for the call

Hi, Mark. I've composed a team and have been polling them for availability. What do the afternoons of the 19th and 21st look like for you all? Is that soon enough for you (next week is looking jammed already)?

Michele A. Whitham, Esquire
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1239 (direct)
(617) 832-7000 (fax)
mwhitham@foleyhoag.com

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-----Original Message-----

From: Mark R. Bortman [mailto:markb@sportbox.com]
Sent: Friday, July 09, 2004 8:57 AM
To: Whitham, Michele
Subject: RE: Thanks for the call

Michele,

Thank you for the call yesterday. We look forward to meeting with you
and your team.

Thank You,

Mark R. Bortman
Sales & Marketing
Sportbox, LLC.
Brighton Landing East
20 Guest Street, Suite 400
Brighton, MA 02135
Direct: 617-779-2433
Cellular: 617-699-3548
Facsimile: 617-783-1008

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Sportbox, LLC.
Tel: 617-779-2424

From: Whitham, Michele [mailto:MWhitham@Foleyhoag.com]
Sent: Thursday, July 08, 2004 6:25 PM
To: markb@sportbox.com
Subject: Thanks for the call

So nice to hear from you, Mark. I'm assembling a team to meet with you; trying for as early as next week. In the meantime, I look forward to learning more about sportbox!

Michele A. Whitham, Esquire
FOLEY HOAG LLP
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EXHIBIT I

Whitham, Michele

From: David Hutchinson [dhutchinson@taylorganson.com]
Sent: Wednesday, September 15, 2004 12:50 PM
To: Whitham, Michele
Cc: David P. Hutchinson (E-mail); Edward R. Martin
Subject: FW: Conway Update

Michele, as discussed, below please find the email as received by my client and forwarded to me, which appears to have been sent by you to John Conway with a copy to your client, Mark Bortman (erroneously to the sportbox account).

Regards,

David

3/18/2005